Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

AVAILABILITY OF BOUND VOLUMES

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 86-151)

Reimbursable Service—Excess Cost of Preclearance Operation

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 23, 1986.

Notice is hereby given that pursuant to Section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess cost for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning August 31, 1986.

Installation	Biweekly excess cost
Montreal, Canada	$18,208
Toronto, Canada	31,117
Kindley Field, Bermuda	10,755
Nassau, Bahama Islands	24,825
Vancouver, Canada	12,752
Winnipeg, Canada	2,759
Freeport, Bahama Islands	17,542
Calgary, Canada	7,774
Edmonton, Canada	4,739

D. LYNN GORDON,
Acting Comptroller.

[Published in the Federal Register, August 19, 1986 (51 FR 29626)]

(T.D. 86-152)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

July 4, 1986, Holiday.

Greece drachma:	
July 1, 1986	$0.007174
July 2, 1986	.007151
July 3, 1986	.007202
Israel shekel:	
July 1-3, 1986	N/A
South Korea won:	
July 1, 1986	.001126
July 2, 1986	.001126
July 3, 1986	.001126
Taiwan N.T. dollar:	
July 1, 1986	N/A
July 2, 1986	.026226
July 3, 1986	.026233

(LIQ-03-01 S:COM CIE)

Dated: July 4, 1986.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 86-153)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
July 7–8, 1986	$0.007202
July 9, 1986	.007161
July 10, 1986	.007181
July 11, 1986	.007158
Israel shekel:	
July 7–11, 1986	N/A
South Korea won:	
July 7, 1986	.001128
July 8, 1986	N/A
July 9, 1986	.001128
July 10, 1986	.001125
July 11, 1986	.001125
Taiwan N.T. dollar:	
July 7, 1986	.026233
July 8, 1986	.026233
July 9, 1986	.026233
July 10, 1986	.026233
July 11, 1986	.026233

(LIQ–03–01 S:COM CIE)

Dated: July 11, 1986.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 86–154)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
July 14, 1986	$0.007143
July 15, 1986	.007117
July 16, 1986	.007239
July 17, 1986	.007233
July 18, 1986	.007246

Israel shekel:	
July 14–18, 1986	N/A
South Korea won:	
July 14–15, 1986	.001124
July 16–18, 1986	.001125
Taiwan N.T. dollar:	
July 14–18, 1986	.026233

(LIQ–03–01 S:COM CIE)

Dated: July 18, 1986.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 86–155)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
July 21, 1986	$0.007289
July 22, 1986	.007286
July 23, 1986	.007252
July 24, 1986	.007273
July 25, 1986	.007199
Israel shekel:	
July 21–25, 1986	N/A
South Korea won:	
July 21, 1986	.001125
July 22–23, 1986	.001126
July 24–25, 1986	.001125
Taiwan N.T. dollar:	
July 21–25, 1986	.026233

(LIQ–03–01 S:COM CIE)

Dated: July 25, 1986.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 86–156)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
July 28, 1986	$0.007273
July 29, 1986	.007337
July 30, 1986	.007286
July 31, 1986	.007372
Israel shekel:	
July 28–31, 1986	N/A
South Korea won:	
July 28, 1986	.001124
July 29, 1986	.001125
July 30, 1986	.001124
July 31, 1986	.001125
Taiwan N.T. dollar:	
July 28, 1986	.026233
July 29, 1986	.026233
July 30, 1986	.026240
July 31, 1986	.026247

(LIQ–03–01 S:COM CIE)

Dated: July 31, 1986.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 86-157)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 86-132 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

China P.R. renminbi yuan:
July 7-11, 1986 ..... $0.269331

(LIQ-03-01 S:COM CIE)
Dated: July 11, 1986.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 86-158)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 86-132 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

China P.R. renminbi yuan:
July 14-18, 1986 ..... $0.269331

(LIQ-03-01 S:COM CIE)
Dated: July 18, 1986.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 86-159)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 86-132 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
July 24, 1986	$0.61260
July 25, 1986	.60150
China P.R. renminbi yuan:	
July 21-25, 1986	.269331

(LIQ-03-01 S:COM CIE)

Dated: July 25, 1986.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 86-160)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 86-132 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:	
July 28, 1986	$0.61050
July 29, 1986	.60930
July 30, 1986	.61040
July 31, 1986	.59590
China P.R. renminbi yuan:	
July 28-31, 1986	.269331

Japan yen:	
July 31, 1986	.006500
Switzerland franc:	
July 31, 1986	.595948

(LIQ-03-01 S:COM CIE)
Dated: July 31, 1986.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

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James L. Watson
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Frederick Landis

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Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 86–78)

CONCENTRIC PUMPS, LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 84-10-01335

Before TSOUCALAS, *Judge.*

MEMORANDUM OPINION AND ORDER

[Defendant's motion to dismiss granted; action dismissed.]

(Decided August 1, 1986)

Stack and Filpi (Paul F. Stack), for the plaintiff.
Richard K. Willard, Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice *(Judith M. Barzilay and Paula N. Rubin),* for the defendant.

TSOUCALAS, *Judge:* Plaintiff, Concentric Pumps, Ltd., brings this action challenging the refusal of the Customs Service to reliquidate 12 entries pertaining to oil and water pumps, and parts of fans. The Customs Service classified the merchandise under various items within Schedule 6, of the Tariff Schedules of the United States (TSUS). Consequently, the merchandise was liquidated at the *ad valorem* rate. Plaintiff contests this classification alleging that the merchandise contained American made parts and therefore, is entitled to be entered duty free under item 807.00, TSUS. This item exempts from duty certain American made components which are returned to the United States as parts of articles assembled abroad. Prior to the time of liquidation, plaintiff did not assert duty free status for the merchandise. Plaintiff contends that it was unaware of item 807.00, TSUS, and that § 520(c) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1520(c)(1), permits reliquidation of these goods to correct this alleged mistake of fact.

Defendant now moves to dismiss the action, pursuant to USCIT R. 12, for lack of jurisdiction and for failure to state a claim upon which relief may be granted. Defendant argues that § 520(c)(1) does not include within its parameters a failure to know the existence of the TSUS item. Since plaintiff has failed to state a claim upon which relief may be granted, the action must be dismissed.

BACKGROUND

Plaintiff, Concentric Pumps, Ltd., an English corporation, imported oil and water pumps, and parts of fans, which entered the country through the port of Chicago in 12 entries.[1] These entries were liquidated from October 29, 1982 through September 23, 1983. Subsequent to liquidation plaintiff requested that the goods be reliquidated pursuant to § 520(c)(1), claiming that at the time of importation, plaintiff was unaware of item 807.00, TSUS. Item 807.00, TSUS, allows duty free treatment for American made parts exported in assembly ready condition, which have not lost their physical identity and have not been advanced in value or improved in condition, when assembled abroad. These requests were denied by the District Director. Plaintiff then filed two protests [2] on January 4, 1984, concerning the 12 entries. These protests again alleged that the merchandise imported had assembled into it goods manufactured in the United States and exported to the United Kingdom for assembly. Plaintiff claimed that at the time of importation, plaintiff was unaware of item 807.00, TSUS, and consequently failed to notify its customs broker as to the incorporation of American manufactured parts into the imported merchandise. On April 23, 1984, the Customs Service denied these protests refusing to reliquidate the goods as "American goods returned." Plaintiff thereafter filed this action.

The question presented to the Court is whether plaintiff's lack of knowledge of item 807.00, TSUS, can be viewed as a mistake of fact which would permit reliquidation under § 520(c)(1).

The court holds that plaintiff's failure to know the existence of item 807.00 does not constitute a mistake of fact or other inadvertence remediable under § 520(c)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1520(c)(1). Therefore, the court grants defendant's motion and the action is dismissed for failure to state a claim upon which relief may be granted.

DISCUSSION

This Court must determine whether an importer's failure to claim duty free status due to its ignorance of a Tariff Schedule item constitutes a mistake of fact or inadvertence cognizable under

[1] See the following table:

Date of entry	Entry No.	Date of entry	Entry No.
9/24/82	716396	1/19/83	612320
10/19/82	611169	2/02/83	612378
11/16/82	611634	3/14/83	612964
12/08/82	611699	3/23/83	612579
12/27/82	611768	4/27/83	613220
1/19/83	612321	5/11/83	613245

[2] Protest No. 39014000010 and Protest No. 39014000011 each concerning six entries.

§ 520(c)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1520(c)(1) (1982).

Section 520(c) provides in pertinent part:

> (c) Notwithstanding a valid protest was not filed, the appropriate customs officer may, * * * reliquidate an entry to correct—
>
> (1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the appropriate customs officer within one year after the date of liquidation or exaction; * * *

19 U.S.C. § 1520(c)(1) (1982).

Section 520(c)(1) was amended to include "mistake of fact, or other inadvertence" by the Customs Simplification Act of 1953, 67 Stat. 507, 519 § 20. The legislative history behind this amendment indicates that Congress intended to eliminate "certain unnecessary annoyances and inequities which plague both the Government and private parties" involved in importation. S. Rep. No. 632, 83d Cong., lst Sess. 1, *reprinted in* 1953 U.S. Code Cong. & Ad. News 2283. The amendment was designed to facilitate the administration of the customs law and eliminate certain inequities by reducing the excessive amount of time customs officers spent on dealing with complaints. Simplifying Customs Administration and Procedures: H.R. Rep. No. 1089, 82d Cong., lst Sess. 18 (1951).

In reviewing the statute and the legislative history behind the amendment to § 520(c)(1), there is nothing to suggest that Congress intended § 520(c)(1) to remedy an importer's mistaken or inadvertent lack of knowledge of the Tariff Schedule items.

Recent cases interpreting the parameters of § 520(c)(1) have established the limited remedial nature of § 520(c)(1). The limited redress of § 520(c)(1) is not directed at rectifying allegedly incorrect interpretations of law. *Computime, Inc.* v. *United States,* 9 CIT ——, Slip Op. 85-115, at 5 (Nov. 1, 1985); *see also, Hambro Automotive Corporation* v. *United States,* 66 CCPA 113, 120, C.A.D. 1231, 603 F.2d 850, 855 (1979). Determinations by the Customs Service that merchandise is covered by a certain provision of the TSUS are conclusions of law. *See, Mattel, Inc.* v. *United States,* 72 Cust. Ct. 257, 262, C.D. 4547, 377 F. Supp. 955, 960 (1974). Therefore, barring mistake of fact, an erroneous classification would render § 520(c)(1) inapplicable. *Id.* at 262, 377 F. Supp. at 960. In that event plaintiff would be limited to seeking relief under § 514 of the Tariff Act of 1930, 19 U.S.C. § 1514, which sets forth the appropriate procedure to protest a misinterpretation of the applicable law and an improper classification by the Customs Service.

This Court finds that plaintiff's claim cannot properly be classified as a mistake of fact which would allow plaintiff to avail itself of the application of § 520(c)(1).

It has been held that a "mistake of fact exists where a person understands the facts to be other than they are, whereas a mistake of law exists where a person knows the facts as they really are but has a mistaken belief as to the legal consequences of those facts." *Hambro Automotive Corporation* v. *United States,* 66 CCPA 113, 118, C.A.D. 1231, 603 F.2d 850, 854 (1979) (citing 58 C.J.S. Mistake, § 832). It has been defined as a mistake which takes place when some fact which indeed exists, is unknown, or a fact which is thought to exist, in reality does not exist. *C.J. Tower & Sons of Buffalo, Inc.* v. *United States,* 68 Cust. Ct. 17, 22, C.D. 4327, 336 F. Supp. 1395, 1399 (1972), *aff'd,* 61 CCPA 90, C.A.D. 1129, 499 F.2d 1277 (1974).

C.J. Tower & Sons is a leading case on what constitutes a mistake of fact sufficient to bring to bear application of § 1520(c)(1). In *Tower,* neither the District Director of Customs nor the importer were aware that the merchandise in question was emergency war materials, entitled to duty free treatment under item 832.00, TSUS, until after the liquidation became final. The court held that such a lack of knowledge did not amount to an error in the construction of law but came within the statutory language "mistake of fact or other inadvertence." *C.J. Tower & Sons,* 68 Cust. Ct. at 22, 336 F. Supp. at 1399.

Plaintiff attempts to analogize its situation to the one presented in *Tower.* However, plaintiff's reliance on *Tower* is misplaced. In *Tower,* the importer and the Customs Service were both unaware of the nature of the goods prior to liquidation, and sometime thereafter. Based upon the facts known to both the Customs Service and the importer, the goods were subject to duty; the importer was unaware of the ultimate use of his goods and therefore, could not relate such information to the Customs Service.

This Court observes that the *Tower* court considered significant, the character of the merchandise imported, namely, for military department use. The court noted that the applicable free entry provision for governmental importations must be liberally construed particularly when the action is brought under § 1520, and if the mistake of fact is the underlying cause for failure to comply with the provision in question. *Id.* at 23, 336 F. Supp. at 1400.

In this action, plaintiff states that it was unaware, at the time of liquidation, that its goods contained American made parts. However, the protests filed by plaintiff and the allegations in its complaint are void of any reference to a mistake in the nature of the goods. The only inadvertence plaintiff addresses goes to its knowledge of the existence of the specific item in the Tariff Schedule. This mistake was not the kind contemplated by the court in *Tower.* Where the importer knew the nature of its goods, but was not

aware of a duty free item listed in the Tariff Schedule, no other conclusion can be drawn but that no mistake of fact was involved. If any error occurred, it "amounted to an error in the construction of law or to ignorance of the law." *PPG Industries, Inc.* v. *United States,* 7 CIT 118, 126 (1984). Similarly, in this situation plaintiff's mistake is not one of fact, but one of law.

Based on the facts before this Court, plaintiff's case is more analogous to the one presented in *Godchaux-Henderson Sugar Co., Inc.* v. *United States,* 85 Cust. Ct. 68, C.D. 4874, 496 F. Supp. 1326 (1980). There, the importer failed to file a consumption entry for its merchandise within the time limit prescribed by law to obtain duty free treatment. The court held that plaintiff's ignorance of the duty free status of its merchandise and of the deadline was not remediable under § 520(c)(1).

Plaintiff's claim, which it raises for the first time, as to its lack of knowledge of the American made parts contained in the pumps is not persuasive. Plaintiff admits that when it became aware that it had paid full duty on goods entitled to be entered duty free, the time for filing a protest pursuant to § 514 had expired. Therefore, plaintiff requested reliquidation of the entries pursuant to § 520(c). In conceding this fact, plaintiff realized that it was precluded from seeking relief under § 514 and therefore endeavored to rectify its mistake by availing itself of the remedy under § 520(c)(1). However, it has been held that "§ 1520(c)(1) cannot be used as 'an alternative to the normal liquidation-protest method of obtaining review,' but rather affords 'limited relief' where an unnoticed or unintentional error has been committed." *Computime, Inc.* v. *United States,* 9 CIT ——, Slip Op. 85–115, at 6 (Nov. 1, 1985) (quoting *C.J. Tower & Sons of Buffalo, Inc.* v. *United States,* 68 Cust. Ct. 17, 21, C.D. 4327, 336 F. Supp. 1395, 1398 (1972), *aff'd,* 61 CCPA 90, C.A.D. 1129, 499 F.2d 1277 (1974)).

The Court stresses that § 520(c)(1) is not remedial for every conceivable form of mistake or inadvertence adverse to an importer, but rather the statute offers "limited relief in the situations defined therein." *Phillips Petroleum Co.* v. *United States,* 54 CCPA 7, 11, C.A.D. 893 (1966); *accord PPG Industries Inc.* v. *United States,* 7 CIT 118 (1984), and *C.J. Tower & Sons* v. *United States, supra.*

Conclusion

Plaintiff has failed to state a claim upon which relief may be granted. It has failed to allege sufficient facts which would indicate that a mistake of fact was committed as contemplated by 520(c)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1520(c)(1), and therefore the motion to dismiss must be granted. Accordingly, defendant's motion to dismiss is granted.

161-319 0 - 86 - 2

(Slip Op. 86-79)

ALYESKA PIPELINE SERVICE CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 81-09-01252

Before WATSON, *Judge.*

MEMORANDUM OPINION AND ORDER

Timeliness of Protest—Adequacy of Protest—Classification—Value Advance

After finding that the protests were timely due to the failure of the customshouse personnel to make the entry papers available for inspection, and further finding that the form of the protests was adequate to bring plaintiff's objections to the attention of the Customs Service, the court holds that the importations, consisting of various items of structural support for the Alaska pipeline, are properly classifiable as columns, girders or similar structural units. The court also finds that the value was improperly advanced on one of the entries.

[Judgment for plaintiff.]

(Decided August 1, 1986)

George R. Tuttle, P.C. (Stephen S. Spraitzar, Esq. of counsel) for plaintiff.

Richard K. Willard, Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office (*Florence M. Peterson,* attorney) for the defendant.

WATSON, *Judge:* This case arises from the importation during 1975 to 1977 of metal articles manufactured in Japan and used in the construction of the Trans-Alaska Pipeline System. These articles were part of a structure known as an anchor support module, which was specially designed to support a pipeline off the ground while allowing a degree of flexibility sufficient to prevent the stresses of seismic activity and thermal movement from causing damage to the pipeline.

The specific items imported were "framing", "saddle clamps", "sliding plates" and the nuts, bolts, and washers used to connect the framing to the clamps and to brackets which are not part of the items imported here.

The framing resembles a huge, square mattress frame, considerably reinforced across its center and on its diagonals in order to support (in its center) the sliding plate, the saddle clamp and the pipeline. The sliding plate looks like a truncated, hollow column set on a flat rectangular plate sitting in the middle of the framing. It has a big hemisphere resting domeside-down, partly inside its hollow top. The hemisphere can be welded at different angles inside the hollow top of the sliding plate to accommodate the angle at which the pipeline is passing through above it. The u-shaped

bottom part of the saddle clamp goes on top of the hemisphere, the pipe rests on that and the top of the saddle clamp closes over the pipe, securing it to the support structure below.

To make a complete anchor support module, four piles are sunk into the ground, heat pipes and radiator assemblies are installed and brackets are attached to the piles. The imported framing is then bolted to the brackets on the piles, followed by the installation of the sliding plate, the welding of the hemisphere and the lower saddle clamp, the placement of the pipeline and the fastening of the upper saddle clamp. With a little imagination the completed unit resembles a giant four-poster bed with a column in its center supporting and clamping the pipeline.

The articles in question were imported in twenty-one separate entries. The classification of the articles in twenty of those entries was not protested until more than ninety days after the date of their liquidation, a fact which would normally make the protests untimely and would ordinarily preclude the bringing of an action in court under 28 U.S.C. § 1581(a) and 19 U.S.C. § 1514(c)(2)(A). However, in this case the plaintiff proved that the entry papers were not available to its counsel for inspection at the Customshouse in Anchorage, Alaska in November, 1977 or January and February of 1980. The testimony of Mr. Leonard Fertman, Esq., as well as the testimony of Mr. Charles Edelin, a customshouse broker, persuaded the court that the entries had been misplaced, probably due to understaffing and difficult conditions in the Customshouse, and were not made available, despite repeated requests, until March 26 and 27, 1980. In these circumstances the liquidation of the entries was "tolled" and plaintiff did not lose its opportunity to make protests against administrative action on those entries. *Schering Corp.* v. *United States*, 67 CCPA. 83, C.A.D. 1250 626 F.2d 162 (1980). The subsequent inclusion of those entries on a document entitled "amended protest" was sufficient to inform the Customs Service of plaintiff's objection to classification. *United States* v. *Fred Gretch Mfg. Co., Inc.*, 26 CCPA 267 C.A.D. 26 (1938); *American Export Lines* v. *United States*, 85 Cust. Ct. 20, C.D. 4864 (1980), aff'd 69 CCPA 1 , C.A.D. 1268, 657 F.2d 1214 (1981).

The administrative treatment of the twenty-one entries raises an issue of classification and an issue with respect to the assessment of duties on the one entry which was unarguably protested in a timely manner.

On the classification issue, the government defends its classification of the imported articles under Item 657.20 of the Tariff Schedules of the United States ("TSUS") as articles of iron or steel, not coated or plated with precious metal, dutiable at the rate of 9.5% ad valorem, pursuant to T.D. 68–9.

Alternatively, the government claims that the importations are properly classifiable as other parts of structures of base metal

under Item 652.98 of the TSUS dutiable at the rate of 9.5% ad valorem.

The plaintiff claims that the framing, sliding plate and saddle clamp are properly classifiable under Item 652.94, as modified by T.D. 68–9, as "columns, pillars, posts, beams, girders, and similar structural units, not in part of alloyed iron or steel, dutiable at the rate of 3.5% ad valorem. Plaintiff claims that the nuts and bolts are classifiable under Item 646.54 as "bolts and their nuts imported in the same shipment" dutiable at 2 cents per pound and further, that the washers are free of duty under Item 646.70.

Alternatively, the plaintiff claims that all of the importations, including the nuts, bolts and washers are classifiable under Item 652.94.

A separate issue is raised by the fact, that on a single entry (No. 76–102427 of September 20, 1979) the Customs Service advanced the value by the amount of $2,589,294 to cover value advances relating to all these twenty-one entries (and two other entries, not before the Court) and then demanded duty in the amount of $245,982.93.

The plaintiff protests the advance as done in violation of law and regulation and seeks a refund of all but the pro-rata portion of the duty actually attributable to entry No. 76–102427.

The government contends that the court has no jurisdiction over the claim because the protest was insufficient to raise it, that plaintiff is equitably barred from prevailing on the claim, and that, if there was an error, it was harmless and the Court should order the value advance to be pro-rated over all the appropriate entries.

The exact language of the competing classification provisions is as follows:

Original Classification by customs:

	Articles of iron or steel, not coated or plated with precious metal:	
* * * * * * *		
	Other articles:	
* * * * * * *		
	Other:	
* * * * * * *		
657.20	Other	9.5% ad valorem

Alternative Government Claim:

	Hangars and other buildings, bridges, bridge sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, door and window frames, shutters, balustrades, columns, pillars, and posts and other structures and parts of structures, all the foregoing of base metal:	

*	* * * * * *	
652.98	Other	9.5% ad valorem

Plaintiff's Claimed Classification:

	Hangars and other buildings, bridges, bridge sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, door and window frames, shutters, balustrades, columns, pillars, and posts and other structures and parts of structures, all the foregoing of base metal:	
	Of iron or steel:	
*	* * * * * *	
	Columns, pillars, posts, beams, girders and similar structural units:	
	Not in part of alloy iron or steel:	
*	* * * * * *	
652.94	Other	3.5% ad valorem
	Bolts, nuts, studs and studding, screws, and washers (including bolts and their nuts imported in the same shipment, and assembled bolts or screws and washers, with or without nuts); screw eyes, screw hooks and screw rings, turnbuckles; all the foregoing not described in the foregoing provisions of this subpart, of base metal:	
	Of iron or steel;	
646.54	Bolts and bolts and their nuts imported in the same shipment	0.2¢ per pound
*	* * * * * *	
646.70	Washers:	
*	* * * * * *	
	Other	Free

The outcome of the classification dispute depends on whether one takes a limited view of what is a column or girder or a similar structural unit. The expert testimony in this case, the lexicographic authorities reviewed, and simple direct examination of the exhibits, lead the court to conclude that the imported articles are merely elaborate or creative forms of columns or girders, well within the range of acceptable variation of the named articles. They are most accurately described as girders, columns or similar structural units.

This holds true even if the Court looks at the entire assembled unit of framing, sliding plate and saddle clamp as a single object.

In that form the Court sees nothing more than a metal structure with a main horizontal supporting member and a single columnar element rising from its center. If we examine it as a single object or if we reduce it to its components, the similarity to girders and columns is equally impressive.

The framing has all the attributes of a girder as defined in *Webster's Third New International Dictionary Unabridged* (1966):

> Girder n.1 a: a horizontal main member supporting vertical concentrated loads as from beams) b: Beam; esp: an iron or steel beam either made in a single piece of built up typically of plates, flitches, latticework, or bars and often of very large proportions—compare * * * box girder * * *

The framing, impressive as it is, is but a simple object compared to the box girder which was the subject of *J. Ray McDermott & Co., Inc.* v. *United States*, 69 Cust. Ct. 197, C.D. 4344 (1972), and there held to be a girder under Item 652.921. The box girder was the portion of an offshore drilling platform that was welded on top of the legs of the platform and supported the entire deck sections, living quarters and drilling rig. In short, the box girder was an enormous variation of a girder, just as the framing here is another lesser sort of variation.

The sliding plate with its hemispherical top and the saddle clamp on top is clearly acting as a column in supporting a compression load, that is to say, a load which compresses the column. It also has the appearance of a column, no stranger in its way than those of antiquity.

The government argues that these importations are more than girders or columns but this argument is not persuasive. The combination into which they are fashioned after importations is nothing more than a combined girder and column which, in its basic function does just what such articles or similar structures would normally do.

These importations have not reached the point at which they become more than girders and columns. This contrasts with the articles in dispute in the recent opinion of *Nissho-Iwai American Corp.* v. *United States*, 10 CIT —— (Slip Op. 86–27, March 12, 1986). That decision dealt with the classification of unassembled bridges or bridge sections consisting of columns beams, girders, nuts bolts and, in notable addition, brackets, plates hinges, drain boxes, railing, bridge shoes and railing anchors. The court upheld the classification of these importations under Item 652.98 as bridge sections, and other structures and parts of structures of base metal. Here the imported objects did not undergo a transformation into something beyond a structure similar to girders or columns even, in this Court's opinion, when they were ultimately fastened to piles. The heating units and radiators however, give a new dimension to the structure, taking it past being a mere variant or combination of traditional weight or stress bearing elements. The piles and heat-

ing units have no bearing on this classification and are mentioned merely to show how much more would have to be involved in these importations to make them comparable to the situation in the *Nissho-Iwai* case.

The capacity for movement of the sliding plate is an additional feature of the support module but it is not so unusual that it overtakes and transforms the basic support functions which make these articles girders, columns or similar structural units.

Based on a stipulation entered into by the parties and expert testimony on those entries which were not the subject of stipulation, the court concludes that the imported articles were not alloyed.

In the opinion of the court the proper classification of the imported articles is to treat the framing, sliding plate and saddle clamp as columns and girders or similar structural units. The nuts and bolts should be classified under Item 646.54, with their weight determined by the best available information. The washers are free of duty.

The court now turns to the question of the assessment of duties on Entry No. 76–102427.

The court finds that the first protest filed by plaintiff adequately expressed its objections to the value advance when it stated as follows:

> The above claims are made against the original entry as well as the value advance of $2,589,294 made against this entry but representing a value advance pertaining to approximately 24 additional entries of identical merchandise covered by P.O. 10771–SF60–M–3–SAC.

The value advance was properly challenged in this action as a dispute as to the appraised value or a dispute as to the classification and rate and amount of duties chargeable, under 19 U.S.C. § 1514a (1) and (2). *C.L. Hutchins & Co., Inc., Imperial Rug Mills, Inc.*, v. *United States*, 67 Cust. Ct. 60, C.D. 4252 (1971); *United States* v. *Macksond Importing Co., et al.*, 25 CCPA 44, T.D. 49041 (1937).

The law does not permit the Customs Service to assign to one entry the values of merchandise in other entries or the duties owing on them. 19 U.S.C. § 1500 provides for separate, unitary appraisement of entries as follows:

> § 1500. Appraisement, classification, and liquidation procedures:
>
> The appropriate customs officer shall, under rules and regulations prescribed by the Secretary—
>
> (a) appraise merchandise by ascertaining or estimating the value thereof, under section 402 [19 U.S.C. § 1401a], by all reasonable ways and means in his power, any statement of cost of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;

(b) ascertain the classification and rate of duty applicable to such merchandise;

(c) fix the amount of duty to be paid on such merchandise and determine any increased or additional duties due or any excess of duties deposited;

(d) liquidate the entry of such merchandise; and

(e) give notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in such regulations.

The necessity of separate appraisement was recognized in Customs Service Decision 83-39 in which it was stated that a value adjustment to imported merchandise may be reflected only on the entry or entries which cover the imported merchandise.

It follows that the only proper value increase for the entry in question would be one reflecting the value of the merchandise covered by that entry and no other merchandise.

There is no evidence of the claim made by the government in its brief that plaintiff was notified of this irregular procedure, consented to it, or waived its right to raise this issue. The allegedly harmless nature of this error is not apparent to the court.

Accordingly, it is the opinion of the court that the advance of value was improper, the liquidation was invalid and the Customs Service must refund the excess duties charged, i.e., the duties above those attributible to the merchandise covered by that entry.

In sum, the court upholds plaintiff's protests against the classification of these articles and against the advance of value made on Entry No. 76-102427. The importations shall be reliquidated in accordance with the decisions on classification and value expressed in this opinion.

(Slip Op. 86-80)

NATIONAL CORN GROWERS ASSOCIATION, NEW ENERGY CO. OF INDIANA, ARCHER DANIELS MIDLAND CO., OHIO FARM BUREAU FEDERATION AND A.E. STALEY MANUFACTURING CO., PLAINTIFFS *v.* JAMES A. BAKER III, SECRETARY, U.S. DEPARTMENT OF THE TREASURY, JOHN M. WALKER, JR., ASSISTANT SECRETARY, U.S. DEPARTMENT OF THE TREASURY, WILLIAM VON RAAB, COMMISSIONER, U.S. CUSTOMS SERVICE, AND UNITED STATES OF AMERICA, DEFENDANTS AND RAJ CHEMICALS, INC., CERTIFIED OIL CO. AND CITICORP INTERNATIONAL TRADING CO., INC., DEFENDANT-INTERVENORS

Court No. 85-08-01151

Before: RE, *Chief Judge.*

Memorandum Opinion

Defendant-Intervenor RAJ Chemicals, Inc. moves for reassignment of action to three-judge panel for rehearing of decision of single-judge court on grounds that the action raises broad and significant implications in the interpretation of the customs law.

Held: Although reassignment to three-judge panel after a decision by a single-judge court is not precluded as a matter of law, under the circumstances of this case, action will not be reassigned because the issues presented can be most expeditiously and finally resolved through direct appeal to the Court of Appeals for the Federal Circuit.

[Defendant-Intervenor's motion denied.]

[Decided August 4, 1986]

Williams & Connolly (Aubrey M. Daniel III, Stephen L. Urbanczyk, Manley W. Roberts, Robert W. Hamilton, and *William R. Murray, Jr.)* for the plaintiffs.

Richard K. Willard, Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Kenneth N. Wolf*) for the defendants.

Spriggs, Bode & Hollingsworth (William H. Bode, Joseph L. Nellis, Donald W. Fowler, Mark J. Reedy, and *Bruce J. Berger*) for defendant-intervenor RAJ Chemicals, Inc.

Wilmer, Cutler & Pickering (A. Douglas Melamed, Robert C. Cassidy, Jr., and *Deborah M. Levy*) for defendant-intervenor Citicorp International Trading Company, Inc.

Re, *Chief Judge:* Defendant-intervenor RAJ Chemicals, Inc., (RAJ) moves for reassignment of this action to a three-judge panel to rehear the decision of a single-judge court. Since the court has concluded that the ultimate resolution of the issues presented in this case can be determined most expeditiously by direct appeal to the Court of Appeals for the Federal Circuit, the motion is denied.

Background

Plaintiffs, who represent the domestic ethanol industry, on August 29, 1985, commenced this action challenging the Customs Service's decision to classify certain imported ethanol blends from Brazil under item 432.10 of the Tariff Schedules of the United States (TSUS) at a duty rate of 5 per centum ad valorem. Plaintiffs protested the classification of the imported ethanol products, and contended that they should properly be classified under items 427.88 and 901.50, TSUS at a duty rate of 3 per centum ad valorem, plus 60 cents per gallon. The action was assigned to a single-judge court pursuant to 28 U.S.C. § 253(c).

On September 9, 1985, plaintiffs moved for a temporary restraining order and preliminary injunction against the Customs Service, *inter alia,* to delay the liquidation of imports of ethanol mixtures entered after August 8, 1985. These motions were denied by a single-judge court. *See* 9 CIT 468, Slip Op. 85–98 (Sept. 20, 1985). Plaintiffs later renewed their motion for a preliminary injunction against liquidation of the entries of these ethanol blends. This motion was denied by a single-judge court. *See* 9 CIT ——, Slip Op. 85–105 (Oct. 9, 1985). Plaintiffs' motion for a rehearing of this deci-

sion was also denied. *See* 9 CIT ——, 623 F. Supp. 1262 (Nov. 26, 1985).

On November 15, 1985, the Customs Service liquidated an entry of ethanol blends imported by defendant-intervenor RAJ Chemicals, Inc. under item 432.10, TSUS. The court was advised of this fact by counsel for RAJ. Several other entries of ethanol blends, imported by defendant-intervenor Citicorp International Trading Company, Inc. (Citicorp), were also liquidated prior to judgment.

On May 22, 1986, the single-judge court issued and opinion and an accompanying judgment order, rendering judgment for plaintiffs. *See* 10 CIT ——, Slip Op. 86-55 (May 22, 1986). The court found that it had subject matter jurisdiction pursuant to 28 U.S.C. § 1581(i), and that plaintiffs had stated a valid cause of action under the Administrative Procedure Act. In granting relief, the court ordered RAJ to "remit to the United States of America within thirty (30) days of the date hereof duties equal to the rate provided for under item 427.88 and 901.50, TSUS, on any entries * * * which have already been liquidated at a different rate of duty." Citicorp also was ordered to remit to the United States additional duties on entries already liquidated. The judgment will require RAJ to pay approximately 3.5 million dollars in additional duty, and Citicorp approximately 11 million dollars additional duty.

RAJ contends that this portion of the judgment which ordered the payment of additional duties to the United States is contrary to law. It contends that the court's order is in effect the granting of a direct money judgment for duties entered after liquidation has become final, and that this portion of the judgment constitutes the special circumstances which require reassignment and rehearing before a three-judge panel.

Plaintiffs oppose the motion for reassignment. The federal government defendants agree with RAJ's position that the portion of the judgment which grants a direct money judgment against the importers is contrary to law. Nevertheless, while "recogniz[ing] that assignment of this action to a three-judge panel is ultimately within the discretion of the Chief Judge," the government opposes the assignment of the case to a three-judge panel at this stage of the litigation. Defendant-intervenor Citicorp has also moved for rehearing, but takes no position on the motion for reassignment to a three-judge panel.

RAJ, while reserving its rights as to other issues decided in this litigation, bases its motion for reassignment and rehearing before a three-judge panel solely on the issue of the illegality of a money judgment against a private party in favor of the United States under the circumstances presented. RAJ maintains that Customs may not, with certain statutory exceptions not relevant here, reliquidate merchandise after the 90 days allowed for voluntary reliquidation has elapsed. *See* 19 U.S.C. §§ 1501, 1514. Furthermore,

RAJ contends that plaintiffs' cause of action was founded upon the Administrative Procedure Act, which authorizes the court only to "compel agency action unlawfully withheld or unreasonably delayed" or "set aside agency action" that is not supported by law. *See* 5 U.S.C. § 706. RAJ submits that, since there is no authority for the court to provide relief against private parties, the court's order to remit duties to the United States was erroneous and without authority.

DISCUSSION

RAJ's application for a three-judge panel raises an important question of first impression. The question presented is whether, pursuant to the authority conferred by statute, the chief judge may reassign a case to a three-judge panel after the judge to whom the case has been assigned has rendered a decision. The court holds that, although reassignment may be permissible after a decision has been entered, under the circumstances of this case, reassignment is not desirable, and the motion is denied.

The responsibility and authority of the chief judge to assign or reassign cases to individual judges of this Court, or to three-judge panels of the Court, is found in 28 U.S.C. §§ 253(c) and 255(a).

Section 253(c) of Title 28 provides:

> The chief judge, under rules of the court, may designate any judge or judges of the court to try any case and, when the circumstances so warrant, *reassign the case to another judge or judges.*

28 U.S.C. § 253(c) (1982) (emphasis added).

Section 255(a) provides:

> Upon application of any party to a civil action, or upon his own initiative, the chief judge of the Court of International Trade shall designate any three judges of the court to hear and determine any civil action which the chief judge finds: (1) raises an issue of the constitutionality of an Act of Congress, a proclamation of the President or an Executive order; or (2) has broad or significant implications in the administration or interpretation of the customs laws.

28 U.S.C. § 255(a) (1982).

These statutory provisions are implemented by Rule 77(d) of the Rules of the Court of International Trade, which provides in pertinent part:

> (2) *Assignment to Three-Judge Panel.* An action may be assigned by the chief judge to a three-judge panel either upon motion, or upon his own initiative, when the chief judge finds that the action raises an issue of the constitutionality of an Act of Congress, a proclamation of the President, or an Executive order; or has broad and significant implications in the administration or interpretation of the law.

* * * * * * *

(4) *Reassignment.* An action may be reassigned by the chief judge upon the death, resignation, retirement, illness or disqualification of the judge to whom it was assigned, *or upon other special circumstances warranting reassignment.*

U.S.C.I.T. Rule 77(d)(2),(4) (emphasis added).

Section 254 of Title 28 specifies that, except as otherwise provided in 28 U.S.C. § 255, the judicial power of this Court shall be exercised by a single judge. 28 U.S.C. § 254 (1982). In an exceptional case of constitutional or other broad significance, however, the chief judge may appoint a three-judge panel to hear and resolve the case. 28 U.S.C. § 255 (1982); *see Barnhart* v. *United States,* 5 CIT 201, 203–05, 563 F. Supp. 1387, 1389–90 (1983). The purpose of the three-judge panel is to secure a broader judicial representation, and a more extensive collegial consideration of those cases which present the most important issues before the Court. *See* H.R. Rep. No. 267, 91st Cong., 2d Sess. (1970), *reprinted in* 1970 U.S. Code Cong. & Ad. News 3188, 3200–01. As previous opinions of this Court have explained, the decision to assign an action to a three-judge panel lies within the sound discretion of the chief judge. *E.g., Barnhart* v. *United States,* 5 CIT 201, 204–05, 563 F. Supp. 1387, 1390 (1983); *Farr Man & Co.* v. *United States,* 1 CIT 104, 106 (1980); *see also SCM Corp* v. *United States,* 79 Cust. Ct. 163, 165–66, CRD 77–6, 435 F. Supp. 1224, 1227 (1977).

The statute expressly provides that the chief judge may, "*when the circumstances so warrant,* reassign [a] case to another judge or *judges.*" 28 U.S.C. § 253(c) (1982) (emphasis added). The statute specifically provides for reassignment to "judges," in the plural, and thus contemplates reassignment to a three-judge panel in accordance with 28 U.S.C. § 255(a). The phrase, "*when the circumstances so warrant,*" requires that the chief judge make a considered judgment, in light of all the facts and circumstances of the case, whether the action should be reassigned. Since the circumstances are not specified in the statute, it is clear that this decision is committed to the sound discretion of the chief judge. Read in conjunction with 28 U.S.C. § 255(a), section 253(c) must be interpreted to authorize and justify reassignment from a single judge to a three-judge panel only in those cases which, in the discretion of the chief judge, raise important constitutional issues or have broad or significant implications.

Rule 77(d)(4) implements 28 U.S.C. § 253(c) by providing that the chief judge may reassign an action, among other reasons, upon "special circumstances warranting reassignment." The situations in which a judge is unable to continue to perform judicial duties in a case appear exhausted by the specific references in the rule to "death, resignation, retirement, illness or disqualification." The provision for reassignment upon "other special circumstances" authorizes the chief judge to reassign the case in extraordinary situa-

tions in which the ability of the assigned judge to perform need not be implicated. This provision of the rule, therefore, enables the chief judge to reassign a case to a three-judge panel when an action raises important constitutional issues or has broad or significant implications in the administration of the laws regulating international trade.

In addition to fostering a fuller judicial consideration of the case, a three-judge panel also promotes the national policy of uniformity, as set forth in Article I, Section 8 of the United States Constitution which mandates that "all Duties, Imports and Excises shall be uniform throughout the United States." U.S. Const. art. I, § 8; *see* Re, *Litigation Before the United States Court of International Trade,* 19 U.S.C.A. at VII (West Supp. 1986). An important objective of Congress in enacting the Customs Courts Act of 1980 was to provide greater uniformity and consistency in the interpretation and application of the international trade laws. *See, e.g.,* H.R. Rep. No. 1235, 96th Cong., 2d Sess. 20, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3729, 3731; 126 Cong. Rec. 27,056, 27,063 (1980) (remarks of Sen. DeConcini). By eliminating jurisdictional conflicts over the laws regulating international trade, and expanding the opportunities for judicial review, Congress sought to provide for greater certainty and stability in the law. The appointment of a three-judge panel ensures that the decision reached will reflect an institutional consensus, and thereby serves to further the statutory and constitutional mandate of uniformity in the interpretation of the international trade laws.

In addition to settling the controversy between the parties, the judicial decision has precedential value. *See* Re, *Stare Decisis,* 79 F.R.D. 509 (1979). Thus, all final decisions and decisions granting or refusing a preliminary injunction must be supported by "a statement of findings of fact and conclusions of law; or * * * an opinion stating the reasons and facts upon which the decision is based," 28 U.S.C. § 2645(a) (1982), and these decisions must be preserved and open to inspection. 28 U.S.C. § 257 (1982). The published opinions of this Court were intended to serve as valuable guides to the rights and obligations of the international trade community. This important statutory goal would be undermined if there were no mechanism for securing broad judicial representation and consideration in exceptional cases of far reaching significance. *Cf.* 28 U.S.C. § 46(c) (1982); Fed. R. App. P. 35(a) (providing for rehearing in banc by Courts of Appeal). Thus, Congress has conferred upon the chief judge the authority and responsibility to enable extensive collegial consideration of a case when it is determined to be necessary and in the public interest. *See* 28 U.S.C. § 255(a) (1982).

Of course, for reasons of judicial economy and efficiency, the authority to reassign should be used sparingly. Indeed, it may be stated that motions for reassignment to a three-judge panel, made after the case has been assigned to a single judge, will be viewed

with disfavor. Motions for reassignment made after a single judge has rendered a decision face an even heavier burden. Certainly, the chief judge will not allow any party to engage in what may appear to be "judge shopping." Nevertheless, it is clear that reassignment to a three-judge panel is not precluded as a matter of law, and may be desirable in certain circumstances. For example, a judge to whom a case has been assigned may conclude that the issues presented are of such significance as to justify consideration by a three-judge panel, and may recommend to the chief judge that the case be reassigned to a three-judge panel.

The asserting of novel jurisdictional issues or other questions of first impression, without more, would not necessarily warrant consideration by a three-judge panel. As has been noted, in this Court, "cases of novel impression are almost commonplace," *Barnhart, supra,* 5 CIT at 205, 563 F. Supp. at 1391 (quoting *SCM Corp., supra,* 79 Cust. Ct. at 166, 435 F. Supp. at 1227), and "a single-judge court has on numerous occasions decided far-reaching questions affecting the court's jurisdiction," *American Air Parcel Forwarding Co.* v. *United States,* 4 CIT 150, 151 (1982) (quoting *United States* v. *Accurate Mould Co.,* 3 CIT 155, 157 (1982)). For example, in this case, at the time of assignment, it appeared that the case would have affected the classification of only a limited number of entries during the brief three-month "grace period" that Customs had established. Thus, while the outcome of the case would be of great significance to the parties, there was no indication at that time that resolution of the issues presented would have significant implications that would have warranted consideration by a three-judge panel.

In this case, which is based on the Administrative Procedure Act, the single-judge court in fashioning a remedy assessed a money judgment against a private party in favor of the United States after liquidation. Whether this remedy is authorized by law and proper has broad and significant implications in the interpretation and administration of the customs laws. It cannot be questioned that the Court of International Trade possesses "all the powers in law and equity of, or as conferred by statute upon, a district court of the United States." 28 U.S.C. §1585 (1982). Indeed, 28 U.S.C. §2643(a) specifically provides that the court "may enter a money judgment * * * for or against the United States in any civil action commenced under section 1581 or 1582 of [Title 28]." 28 U.S.C. §2643(a) (1982). Nevertheless, it is a serious and important question whether the court may fashion relief which, as the defendant-intervenors assert, is not specifically authorized, and which may conflict with a carefully crafted statutory scheme.

The question presented in this case is not one of jurisdiction. Rather, the question presented is whether, assuming that plaintiffs have stated a valid cause of action, there is legal authority for the specific remedy or relief which was granted by the single-judge

court. It is not questioned that, in an action under the Administrative Procedure Act, the court may set aside or compel agency action. The crucial question presented, however, is whether the cause of action asserted authorizes a domestic party to obtain a money judgment in favor of the government after liquidation has become final.

Rule 1 of the Rules of this Court directs that the Rules be "construed to secure the just, speedy, and inexpensive determination of every action." Judicial economy and the expeditious resolution of the litigation are two factors that must be considerd in determining whether to assign or reassign a case to a three-judge panel. *See, e.g., Barnhart, supra,* 5 CIT at 203, 563 F. Supp. at 1389; H.R. Rep. No. 267, *supra,* 1970 U.S. Code Cong. & Ad. News at 3200. Indeed, in enacting 28 U.S.C. §§ 254 & 255, Congress recognized that the procedure under prior law which provided for intermediate review of the decision of a single judge by a three-judge panel in certain cases could be "an unnecessary and time-consuming step." H.R. Rep. No. 267, *supra,* 1970 U.S. Code Cong. & Ad. News at 3200. Because reassignment of the case at this juncture would likely protract the ultimate disposition of the action, the action will not be reassigned.

In this case, the parties have raised a number of issues that may be subject to appeal. The question of the legality of the relief granted is only one of them, and it would violate the principles of sound judicial management to have a case litigated in a piecemeal fashion. Of course, any decision by a three-judge panel of this Court would be subject to appeal to the Court of Appeals for the Federal Circuit. Although the parties may not file a notice of appeal while a motion for rehearing is pending, there is no reason to believe that any party who feels aggrieved will not appeal any adverse judgment. Indeed, two of the parties in this case have already sought relief in the Court of Appeals for the Federal Circuit on two separate occasions. *See National Corn Growers Ass'n* v. *Baker,* Misc. Doc. No. 94 (Fed. Cir. Dec. 4, 1985) (unpublished order); *In re RAJ Chemicals, Inc.,* Misc. Doc. No. 119 (Fed. Cir. June 26, 1986) (unpublished order).

The single-judge court has entered a stay of judgment to maintain the status quo pending disposition of the motion for rehearing and disposition of the appeal. Hence, it is the determination of the Court that the interests of justice can best be served by having all issues finally resolved on appeal in one forum as expeditiously as possible. Since reassignment of this case at this stage of the litigation to a three-judge panel will not aid in the expeditious disposition of the action, and will delay final resolution, the motion for reassignment to a three-judge panel is denied.

Nothing in this opinion is intended or to be interpreted as expressing any view as to the merits of the litigation.

(Slip Op. 86-81)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1160, MARION, INDIANA, PLAINTIFF *v.* RAYMOND J. DONOVAN, U.S. SECRETARY OF LABOR, DEFENDANT

Court No. 83-2-00188

Before RE, *Chief Judge.*

On Plaintiff's Motion for Review of Administrative Determination Upon Agency Record

Plaintiff, on behalf of former employees of the RCA Corporation, Marion, Indiana plant, moves to set aside the final determination of the Secretary of Labor which denied the RCA workers eligibility to apply for trade adjustment assistance benefits. Plaintiff contends that the determination was not supported by substantial evidence and is not in accordance with law.

Held: The Secretary's determination was supported by substantial evidence on the record and is in accordance with law. Therefore, plaintiff's motion is denied, and the action is dismissed.

[Judgment for the defendant; the action is dismissed.]

(Decided August 6, 1986)

Bruce M. Frey, for the plaintiff.

Richard K. Willard, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch (*Sheila N. Ziff*), for the defendant.

RE, *Chief Judge:* Plaintiff, on behalf of former employees of the RCA Corporation (RCA), Picture Tube Division, challenges the Secretary of Labor's denial of certification of eligibility for benefits under the trade adjustment assistance program of the Trade Act of 1974, tit. II, §§ 221-249, 284, 19 U.S.C. §§ 2271-2321, 2395 (1982 & Supp. II 1984). These workers were engaged in the production of picture tubes for color television sets. Specifically, the Secretary found that increased imports did not contribute importantly to the workers' separation at the Marion, Indiana plant. 47 Fed. Reg. 56,935 (1982). Hence, they were deemed ineligible for trade adjustment assistance benefits.

After reviewing the administrative record and the arguments of the parties, the Court holds that the Secretary's denial of certification was supported by substantial evidence, and is in accordance with law. Therefore, the Secretary's determination is affirmed.

ADMINISTRATIVE PROCEEDINGS

On February 1, 1982, plaintiff, on behalf of its members, filed a petition, dated January 26, 1982, with the Secretary of Labor requesting certification of eligibility for trade adjustment assistance benefits. The Office of Trade Adjustment Assistance (OTAA) of the Department of Labor, pursuant to section 221(a) of the Trade Act of 1974, 19 U.S.C. § 2271(a), published a notice in the Federal Register stating that it had received the petition and instituted an investigation. 47 Fed. Reg. 7894 (1982).

Section 222 of the Trade Act provides that the Secretary shall certify a petitioning group of workers as eligible to apply for adjustment assistance benefits if it is determined:

> (1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,
>
> (2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and
>
> (3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

Trade Act of 1974 § 222, 19 U.S.C. § 2272 (1982 & Supp. II 1984).

Plaintiff contended that increased imports of televisions contributed importantly to the decline in sales and production of color television picture tubes at the Marion plant. The OTAA's investigation disclosed that all workers at the Marion plant were engaged in the production of color television picture tubes. These tubes were exported overseas, sold to independent domestic manufacturers, or shipped to affiliated RCA plants for assembly into color television receivers.

During its investigation, the OTAA collected data from the Marion plant and the entire RCA Picture Tube Division concerning sales, production, and employment. This data, together with a customer survey taken by the OTAA, was compiled into a detailed report analyzing the cause of the decreased production of picture tubes at the Marion plant from January 1980 through July 1982. This report indicated that the decline in production was due to a decrease of the Picture Tube Division's export sales, and a decrease in the volume of intracompany shipments over the relevant period.

The statistics compiled by the OTAA revealed that more than half of all picture tubes produced by the RCA Picture Tube Division were shipped to the RCA Consumer Electronics Division to be used in assembling television receivers. During the period from January 1980 to July 1982, intracompany shipments increased slightly in the first year, but declined sharply over the first seven months of 1982. Officials at the Consumer Electronics Division Headquarters reported that the Consumer Electronics Division did not import color television picture tubes. The OTAA found the decrease in intracompany shipments to be attributed to a decline in the sales and production of color television sets by the Consumer Electronics Division. In a concurrent OTAA investigation of the RCA Consumer Electronics Division, Bloomington, Indiana plant, the OTAA concluded that the decrease in the sales of color televisions during the first half of 1982 was primarily due to a loss in the market share to other domestic manufacturers.

As to the export sales of picture tubes by the RCA Picture Tube Division, the OTAA's investigation revealed that from January 1, 1980 to January 1, 1981, export sales decreased 18.9 percent. During the first half of 1982, as compared to the first half of 1981, export sales declined 32.3 percent.

The only increase in the sales of picture tubes was in the Picture Tube Division's sales to independent manufacturers. Overall sales increased slightly in 1981 as compared to 1980, and, during the first seven months of 1982, sales to independent manufacturers increased 20.1 percent. In July 1982, sales to independent manufacturers accounted for 38.1 percent of the Picture Tube Division's total sales as compared to 28.5 percent of the total sales at the end of 1980. This increase occurred despite a decrease in sales to five manufacturers during the first seven months of 1982. As a result of a survey of these five manufacturers, the OTAA concluded that the manufacturers that decreased orders from RCA and increased purchases from foreign picture tube manufacturers "accounted for a relatively minor proportion of the Picture Tube Division's overall decline in sales during the period under investigation."

After reviewing the available data, the OTAA recommended that the plaintiff's request for eligibility to apply for adjustment assistance benefits be denied. Based on these findings, the Secretary determined that increased imports did not contribute importantly to the workers' separation from employment at the Marion plant, and issued a negative determination on the plaintiff's petition. 47 Fed. Reg. 56,935 (1982).

Following the denial of certification, plaintiff commenced this action seeking judicial review of the Secretary's negative determination.

Discussion

Section 284 of the Trade Act of 1974 empowers this Court to review a determination by the Secretary of Labor which denies certification of eligibility for trade adjustment assistance benefits, to ensure that the determination is supported by substantial evidence contained in the administrative record, and is in accordance with law. Trade Act of 1974 § 284(b), 19 U.S.C. § 2395(b) (1982). The findings of fact by the Secretary are conclusive if supported by substantial evidence. Trade Act of 1974 § 284(b), 19 U.S.C. § 2395(b). Moreover, "the rulings made on the basis of those findings [must] be in accordance with the statute and not be arbitrary or capricious, and for this purpose the law requires a showing of reasoned analysis." *International Union* v. *Marshall,* 584 F.2d 390, 396 n.26 (D.C. Cir. 1978), *quoted with approval ILWU, Local 142* v. *Donovan,* 9 CIT 620, Slip Op. 85–127, at 9 (Dec. 11, 1985); *see* 19 U.S.C. § 2273(c).

Plaintiff contends that the findings of the Secretary of Labor, which resulted in the denial of certification of eligibility for trade adjustment assistance, were not supported by substantial evidence

contained in the administrative record. Plaintiff suggests that increased imports of foreign-produced television receivers contributed to the decline in production of television receivers by the RCA Consumer Electronics Division and, therefore, to the decrease in intracompany picture tube shipments by the Marion plant. Plaintiff also contends that there is no support for the Secretary's determination that the five independent manufacturers who had decreased orders from the RCA Picture Tube Division and increased purchases of imported picture tubes, accounted for a "relatively minor proportion" of the Picture Tube Division's overall decline in sales from January 1980 to July 1982.

Plaintiff's contentions are without merit. Plaintiff has not challenged the Secretary's finding that the workers produced color picture tubes. Since completed television sets are not "like or directly competitive" with color television picture tubes, it was proper for the Secretary not to consider imports of completed television sets. Section 222(3) of the Trade Act of 1974 requires the Secretary of Labor to determine whether increased imports contributed importantly to the workers' separation by examining the "increases of imports of articles like or directly competitive with articles produced by such workers' firm." Trade Act of 1974 § 222(3), 19 U.S.C. § 2272(3) (Supp. II 1984).

It is well established that an imported article is "like or directly competitive" with a domestic product if it is "interchangeable with or substitutable for" the article under investigation. *See UAW, Local 834* v. *Donovan,* 8 CIT 13, 20, 592 F. Supp. 673, 678 (1984); *Holloway* v. *Donovan,* 7 CIT 237, 240, 585 F. Supp. 1427, 1430 (1984) (quoting *Machine Printers and Engravers Ass'n* v. *Marshall,* 595 F.2d 860, 862 (D.C. Cir. 1979)). The courts have consistently held that a completed article is not "like or directly competitive" with a component part used in the production of the completed article. *See, e.g., United Shoe Workers* v. *Bedell,* 506 F.2d 174, 185–87 (D.C. Cir. 1974); *Morristown Magnavox Former Employees* v. *Marshall,* 671 F.2d 194, 198 (6th Cir.), *cert. denied sub nom.* 459 U.S. 1041 (1982); *Machine Printers and Engravers Ass'n* v. *Marshall,* 595 F.2d 860, 862 (D.C. Cir. 1979); *UAW, Local 834* v. *Donovan,* 8 CIT 13, 20, 592 F. Supp. 673, 678 (1984); *Holloway* v. *Donovan,* 7 CIT 237, 240, 585 F. Supp. 1427, 1430 (1984). Thus, in *Morristown Magnavox Former Employees* v. *Marshall,* the Court of Appeals for the Sixth Circuit held that "component parts of a television set are not 'like' a completed television set * * * and that imports of fully completed television sets are not directly competitive with the manufacture of printed circuit boards, flybacks and deflection yokes." 671 F.2d at 198.

In view of this well established authority, it is clear that the Secretary properly confined the scope of the investigation to ascertain whether imports of color television picture tubes contributed importantly to the workers' separation.

Plaintiff's remaining argument, that the Secretary erred in finding that increased imports of picture tubes accounted for a relatively minor proportion of the company's overall decline in sales, is unfounded. In order to certify workers as eligible for trade adjustment assistance benefits, the Secretary must determine that increased imports "contributed importantly" to the workers' separation. The term "contributed importantly" is defined by the statute as "a cause which is important, but not necessarily more important than any other cause." Trade Act of 1974 § 222, 19 U.S.C. § 2272 (Supp. II 1984); *see ILWU, Local 142* v. *Donovan*, 9 CIT 620, Slip Op. 85–127, at 10–11 (Dec. 11, 1985).

The record fully supports the Secretary's conclusion that increased imports of picture tubes were not an important cause of the Picture Tube Division's decline in sales, and did not contribute importantly to the workers' separation. The OTAA investigation clearly established that other factors accounted for the greatest portion of the overall decline in picture tube sales. A sharp decrease in intra-company shipments during the first seven months of 1982 was the primary reason for the decline in sales. A substantial decrease in shipments to the export market in 1981 and in the first seven months of 1982 also was a substantial factor in the Picture Tube Division's overall decline in sales. Although sales to five independent manufacturers declined, partially as a result of import competition, OTAA's investigation disclosed that total sales of picture tubes to independent manufacturers increased 20.1 percent during the first seven months of 1982 as compared to the first seven months of 1981.

A thorough review of the record reveals that the only sales lost to imported picture tubes were to the five independent manufacturers, and that these lost sales were minor in relation to the decline in sales caused by reduced intra-company shipments and the decrease in sales to the export market. Thus, increased imports of picture tubes cannot be said to have "contributed importantly" to the workers' separation from employment.

In view of the foregoing, it is the determination of the Court that the Secretary of Labor's denial of certification is supported by substantial evidence, and is in accordance with law. Therefore, the Secretary's determination is affirmed, and plaintiff's action is dismissed.

ABSTRACTED CLASSIFIC

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSES
				Item No. and rat
C86/137	Re, C.J. August 1, 1986	New York Merchandise Co.	79-12-01769	Item 206.98 8%
C86/138	Watson, J. September 1, 1986	S. Ebisuzaki Inc.	79-4-00651, etc.	Item 309.06 17.5%
C86/139	Restani, J. August 5, 1986	Algoma Tube Corp.	83-12-01723	Items 610.42 or 610.43 7.5% or 11% plus additional duties on allo content
C86/140	Restani, J. August 5, 1986	Algoma Tube Corp.	85-1-00038	Item 610.42 or 610.43 7.5% or 11% plus additional duties on allo content

SSIFICATION DECISIONS

ASSESSED HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
and rate	Item No. and rate		
8	Item A203.20 Free of duty	Agreed statement of facts	San Diego Woven wood ashtrays
6	Item 721.44 12.5%	Agreed statement of facts	Honolulu Monofilament fishing line
42 or 11% nal on alloy t	Items 610.39 or 610.40 0.1¢ per lb. plus 4% plus additional duties on the alloy content	Algoma Tube Corp. v. U.S., S.O. 85-89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casing
2 or 11% nal on alloy t	Items 610.39 or 610.40 0.1¢ per lb. or 0.1¢ per lb. plus 4% plus additional duties on the alloy content	Algoma Tube Corp. v. U.S., S.O. 85-89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casing

ABSTRACTED CLASSIFICATION DEC

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED HE	
				Item No. and rate	Item
C86/141	Restani, J. August 5, 1986	Algoma Tube Corp.	85-3-00345	Item 610.42 or 610.43 7.5% or 11% plus additional duties on alloy content	Item 61 0.1
C86/142	Restani, J. August 5, 1986	Algoma Tube Corp.	85-3-00347	Item 610.42 or 610.43 7.5%, 6.8%, or 11% or 8.6% plus additional duties on alloy content	Item 61 0.1
C86/143	Restani, J. August 5, 1986	Algoma Tube Corp.	85-3-00348	Item 610.42 or 610.43 7.5% or 11% plus additional duties on alloy content	Item 61 0.1
C86/144	Restani, J. August 5, 1986	Algoma Tube Corp.	85-3-00349	Item 610.42 or 610.43 7.5% or 11% plus additional duties on alloy content	Item 61 0.1

N DECISIONS—Continued

SED HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
	Item No. and rate		
	Item 610.39 or 610.40 0.1¢ per lb. or 0.1¢ per lb. plus 4% plus additional duties on the alloy content	Algoma Tube Corp. v. U.S., S.O. 85-89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casing
	Item 610.39 or 610.40 0.1¢ per lb. or 0.5% or 0.1¢ per lb. plus 4% plus additional duties on the alloy content	Algoma Tube Corp. v. U.S., S.O. 85-89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casing
	Item 610.39 or 610.40 0.1¢ per lb. or 0.1¢ per lb. plus 4% plus additional duties on the alloy content	Algoma Tube Corp. v. U.S., S.O. 85-89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casing
	Item 610.39 or 610.40 0.1¢ per lb. or 0.1¢ per lb. plus 4% plus additional duties on the alloy content	Algoma Tube Corp. v. U.S., S.O. 85-89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casing

C86/145	Restani, J. August 5, 1986	Algoma Tube Corp.	85-4-00599	Item 610.42 or 610.43 7.5%, 6.8%, 11% or 8.6% plus additional duties on alloy content	I
C86/146	Restani, J. August 5, 1986	Algoma Tube Corp.	85-4-00600	Item 610.42 or 610.43 7.5% or 11% plus additional duties on alloy content	I
C86/147	Restani, J. August 5, 1986	Algoma Tube Corp.	85-4-00601	Item 610.42 or 610.43 7.5%, 6.8%, 11% or 8.6% plus additional duties on alloy content	I
C86/148	Restani, J. August 5, 1986	Algoma Tube Corp.	85-10-01302	Item 610.42 or 610.43 7.5% or 11% plus additional duties on alloy content	I

11% us lloy	Item 610.39 or 610.40 0.1¢ per lb. or 0.5% or 0.1¢ per lb. plus 4% or 3.8% plus additional duties on the alloy content	Algoma Tube Corp. v. U.S., S.O. 85-89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casing
lloy	Item 610.39 or 610.40 0.1¢ per lb. or 0.1¢ per lb. plus 4% plus additional duties on the alloy content	Algoma Tube Corp. v. U.S., S.O. 85-89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casing
1% us lloy	Item 610.39 or 610.40 0.1¢ per lb. or 0.5% or 0.1¢ per lb. plus 4% or 3.8% plus additional duties on the alloy content	Algoma Tube Corp. v. U.S., S.O. 85-89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casing
lloy	Item 610.39 or 610.40 0.1¢ per lb. or 0.1¢ per lb. plus 4% plus additional duties on the alloy content	Algoma Tube Corp. v. U.S., S.O. 85-89	Sault Ste. Marie Quenched and tempered seamless alloy and non-alloy steel plain-end oilwell casing

ABSTRACTED CLASSIFICATION DE

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	
				Item No. and rate	Ite
C86/149	DiCarlo, J. August 8, 1986	S. Madill, Ltd.	77-12-04978	Item 692.16 5% for skidder towers Item 664.10 5% or item 680.50 9.5% or item 680.54 9.5% for yarder parts	Ite

ON DECISIONS—Continued

SSED HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
te	Item No. and rate		
or	Item 666.00 Free of duty for skidder towers and yarder parts	Agreed statement of facts	Blaine Completely assembled Madill 071 Skidder Towers and specially designed parts for Madill logging yarder

ABSTRACTED VALUATION

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	
V86/217	Rao, J. August 5, 1986	Mitsubishi International Corp.	85-7-00957	American selling price	Appr per
V86/218	Watson, J. August 7, 1986	Brother International Corp.	R63/15504, etc.	Export value	F.o.b. plu bet and

ATION DECISIONS

	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
	Appraised values less 22% per pair	Agreed statement of facts	New York Footwear
	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New Orleans Sewing machine heads

Appeal to the U.S. Court of Appeals for the Federal Circuit

Heraeus-Amersil, Inc. v. United States, Ct. No. 82-4-00525 (June 9, 1986), *appeal docketed,* No. 86-1526 (Fed. Cir. July 29, 1986).

Decisions of the U.S. Court of Appeals for the Federal Circuit

Heraeus-Amersil, Inc. v. United States, 10 CIT ——, Slip Op. 85-88, *aff'd,* Appeal Nos. 86-602/650 (Fed. Cir. July 8, 1986).

McKinney v. U.S. Dept. of the Treasury, 10 CIT ——, Slip Op. 85-73, *aff'd,* Appeal No. 85-2806 (Fed. Cir. August 8, 1986).

Sunburst Farms, Inc. v. United States, 10 CIT ——, Slip Op. 85-107, *aff'd,* Appeal No. 86-749 (Fed. Cir. August 8, 1986).

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